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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1466

THE DEMOCRATIC ORGANIZATION OF COOK COUNTY, ETC., ET AL.,
Petitioners,

vs.

MICHAEL L. SHAKMAN AND PAUL M. LURIE, ETC.,
Respondents.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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Respondents, in their Brief in Opposition in No. 1466, raise certain new matters for the first time before this Court. It is in response to these matters that Petitioners respectfully suggest the following:

I.

THE CASE IS RIPE FOR REVIEW.

Respondents argue that the decision of the Court of Appeals "is not a final judgment" and for that reason should not be reviewed by this Court (Respondents' Br., p. 7). Respondents, however, ignore the ample precedent for granting certiorari in these circumstances.

This Court does consent to review decisions raising important jurisdictional questions when a court of appeals has reversed the granting of a motion to dismiss and has ordered the case remanded for trial. In *Land* v. *Dollar*,

330 U. S. 731, at 734 n. 2 (1947), this Court said, "Although the judgment below was not a final one, we considered it appropriate for review because it involved an issue 'fundamental to the further conduct of the case.'" In *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682, at 685, n. 3 (1949), this Court repeated the same statement. Certiorari has been granted where a non-final judgment presents a novel and important question of law, which is fundamental to the further conduct of the case, and where, as here, the petitioner's position, if sustained by this Court, would terminate the litigation. *American Construction Co.* v. *Jacksonville, T & K R. Co.*, 148 U. S. 372 (1893). See also *United States* v. *General Motors Corp.*, 323 U. S. 373, at 377 (1945). In *Gillespie* v. *United States Steel Corp.*, 379 U. S. 148, at 152, 153 (1964), this Court again reiterated;

> "Under Section 1291 an appeal may be taken from any 'final' order of the district court. But as this Court often has pointed out, a decision 'final' within the meaning of Section 1291 does not necessarily mean the last order possible to be made in a case. . . . [T]he requirement of finality is to be given a 'practical rather than a technical construction'."

The two cases cited by Respondents in support of their argument that the case is not ripe for review (Respondents' Br., p. 7) contain, either actually or by reference, statements of the general principle that if a case presents questions of grave public importance or non-uniformity of federal court decisions, this Court will grant a Petition for a Writ of Certiorari. See *Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U. S. 251, 258 (1916), cited in *Brotherhood of Locomotive Firemen* v. *Ranger Aroostock R. R. Co.*, 389 U. S. 327, 328 (1967); and *American Construction Co.* v. *Jacksonville R. R. Co.*, 148 U. S. 372, 383 (1893).

Neither case cited by Respondents on this point has even a superficial similarity to the case at bar.

The *Brotherhood of Locomotive Firemen* case was remanded by the Circuit Court of Appeals to determine whether or not actual contempt occurred—certainly not a question of far-reaching significance.

American Construction Co. involved two cases of receivership. The first case was held to be "neither so important in its immediate effect nor so far-reaching in its consequences" to warrant the issuance of a writ of certiorari. 148 U. S. at 385-86. The second case raised the issue of whether the decision the Circuit Court of Appeals was void because the district judge who finally heard the case was a member of the appellate panel. In that case this Court entered a rule to show cause why a writ of certiorari should not be issued.

Thus both cases are easily distinguishable from the case at bar which involves a conflict between decisions of two federal Circuit Courts of Appeal and raises questions of far-reaching importance:

(1) Will this Court regulate the internal political activities of the major political parties?

(2) Will this Court "legislate" a local Hatch Act by judicial fiat?

(3) Will this Court broaden Federal District Court jurisdiction in local disputes, *contra*, to its recent pronouncements [*Cf. Younger* v. *Harris* (October Term, 1970), 39 L. W. 4201; *Boyle* v. *Landry* (October Term, 1970), 39 L. W. 4207—both cases decided February 23, 1971]?

Since, as demonstrated in the petition, this case deals with several substantial questions of constitutional law of great public importance, and, is clearly a case of first impression, it does not fall within the purview of the cases cited by respondents.

II.

RESPONDENTS' CHARACTERIZATION OF THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS IS INCORRECT.

Respondents on page 6 of their Brief characterize the Seventh Circuit Court of Appeals as having acted unanimously in this case. This characterization ignores the fact that at no time during its disposition of this case did the Court of Appeals so act. The decision of that Court contained a strongly worded and well-reasoned dissent by Chief Judge Swygert (Petition, Appendix B, p. A16), and two judges of that Court voted to grant petitions for rehearing *en banc* (Petition, Appendix C, p. A19).

It should also be noted that Respondent's version of the question of standing does not clearly reflect what occurred in the lower court. The district judge held that the Respondents had no standing to represent the public employees of the City of Chicago. The Circuit Court of Appeals did not reach this particular decision on standing because it initially held that Respondent's had standing as candidates and voters in a suit "seeking redress for injuries to their own interests and the interests of others similarly situated" (Petition, Appendix B, p. A12).

It should also be noted that the Court of Appeals did not reverse in its entirety the holding of the District Judge that the complaint was conclusory. In fact, the Seventh Circuit agreed that much of the Complaint was defective, stating (Petition, Appendix B, p. A13) that:

> "The district court did not agree, and we do not, with much of plaintiffs' expression of the legal analysis of such impact."

CONCLUSION.

For the foregoing reasons and the reasons suggested in the Petition, a writ of certiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully submitted,

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